

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-1930

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1930

UNITED STATES OF AMERICA,

Appellee,

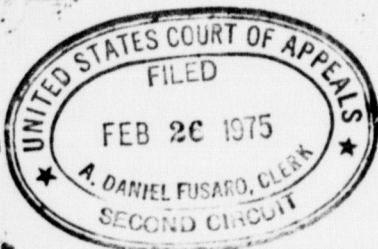
—against—

SERGIO POBLETE,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*

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United States District Court

EASTERN DISTRICT OF NEW YORK

72 Cr. 871

UNITED STATES OF AMERICA

v.

SERGIO POBLETE, ET AL.,

Defendants.

Arrest Warrant

To ¹ ANY SPECIAL AGENT OF THE BUREAU OF NARCOTICS
AND DANGEROUS DRUGS, AND/OR TO ANY UNITED
STATES MARSHAL OR HIS DEPUTIES

You are hereby commanded to arrest SERGIO POBLETE and bring him forthwith before the United States District Court for the Eastern District of New York in the city of Brooklyn, NY to answer to an indictment charging him with conspiring with others to import and bring into the United States and to receive, conceal, buy, sell and facilitate the transportation, sale, and concealment of large amounts of

¹ Insert designation of officer to whom the warrant is issued, e. g., "any United States Marshal or any other authorized officer"; or "United States Marshal for District of"; or "any United States Marshal"; or "any Special Agent of the Federal Bureau of Investigation"; or "any United States Marshal or any Special Agent of the Federal Bureau of Investigation"; or "any agent of the Alcohol Tax Unit."

2a

Arrest Warrant

cocaine, a narcotic drug in violation of Title 21 United States Code, Sections 173 and 174.

Dated at Brooklyn, New York
on July 20, 1972

LEWIS ORGEL,
Clerk.

Bail fixed at \$.....

By MARC MILLER,
Deputy Clerk.

RETURN

Eastern District of New York ss

Received the within warrant the 5 day of May 1974 and
executed same.

By DENNIS J. PERRY

Stenographer's Transcript

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

72 Cr. 871

UNITED STATES OF AMERICA,

Plaintiff,

—against—

SERGIO POBLETE,

Defendant.

United States Courthouse

Brooklyn, New York

May 8, 1974

10:00 o'clock a.m.

Before: HONORABLE JACK WEINSTEIN, *U.S.D.J.*

FRANCES KARR

Official Court Reporter

APPEARANCES:

EDWARD J. BOYD V. ESQ.,
United States Attorney for the
Eastern District of New York

By: CHARLES CLAYMAN, ESQ.,
Assistant United States Attorney

LEGAL AID SOCIETY
Attorneys for defendant.

By: EDWARD KELLY, ESQ.

Stenographer's Transcript

(Paul F. Harrari was duly sworn as interpreter.)

Mr. Kelly: Although the defendant has indicated he would plead guilty to the charge——

The Court: I expect the interpreter to interpret everything. Do not listen, interpret please.

Mr. Kelly: The defendant has requested an adjournment your Honor so that he may reflect a little bit more on what he wants to do.

The Court: Certainly. How long?

Mr. Kelly: He has asked for ten days your Honor.

The Court: Is there any objection?

Mr. Clayman: No your Honor.

The Court: What would that date be—May 18th at 10:00 A.M.

Mr. Kelly: Thank you very much.

Mr. Clayman: That is for disposition.

Mr. Kelly: I think there will be a disposition at that time.

The Court: Make that date May 17th at 10:00 a.m. If there will not be a disposition let me know immediately so I can try the case. This is a jail case and I am prepared to start the trial tomorrow.

Mr. Clayman: I informed Mr. Kelly and the Court the last time, this is an old case and other defendants are fugitives and we have witnesses gathered throughout the country. I would want Mr. Kelly to inform me as the Government needs one or two weeks to get the case ready.

The Court: This is a jail case and should be tried immediately.

Mr. Kelly: I will try to give the United States Attorney as far ahead notice as I can, Judge. Thank you.

* * * * *

Information

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Cr. No. 74 Cr. 383 (T. 26, U.S.C. § 4704(a))

UNITED STATES OF AMERICA

—against—

SERGIO POBLETE,

Defendant.

THE UNITED STATES ATTORNEY CHARGES:

On or about and between the 1st day of January 1970 and the 30th day of July 1970, both dates being approximate and inclusive, within the Eastern District of New York, the defendant SERGIO POBLETE wilfully, knowingly and unlawfully did sell, dispense and distribute one half ($\frac{1}{2}$) kilogram of cocaine, a narcotic drug, not in an original stamped package or from an original stamped package as required by law. (Title 26, United States Code, Section 4704(a).)

/s/ EDWARD JOHN BOYD V
United States Attorney
Eastern District of New York

Stenographer's Transcript

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

72 Cr. 871

UNITED STATES OF AMERICA,

Plaintiff,

—against—

SERGIO POBLETE,

Defendant.

United States Courthouse

Brooklyn, New York

May 17, 1974

10:00 A.M.

Before: HON. JACK B. WEINSTEIN, U.S.D.J.

ILENE GINSBERG

Acting Official Court Reporter

APPEARANCES:

DAVID TRAGER, U.S. Attorney

By: CHARLES CLAYMAN, AUSA

LEGAL AID SOCIETY

Attorneys for defendant

By: EDWARD KELLY, ESQ.

Also present: Spanish Interpreter,
Manuel Ras

Stenographer's Transcript

The Clerk: Criminal cause for pre-trial conference and possible sentence, U.S.A. v. Sergio Poblete.

The Court: Would you swear the interpreter in, please.

(Spanish interpreter, Manuel Ras, was duly sworn by the Clerk of the Court)

Mr. Kelly: Judge, the defendant earlier pleaded not guilty to indictment 72 Cr. 871.

He is now prepared to waive indictment and plead guilty to an information which will be offered to the Court and filed by the United States Attorney.

Mr. Clayman: That information has been offered and I am giving Mr. Kelly copies of the waiver of indictment.

The Court: What is the penalty for this violation?

Mr. Clayman: Under Section 7237 of Title 26, the penalty is imprisonment of not less than two years nor more than ten years and a twenty thousand dollar fine.

The Court: Is there special probation?

Mr. Kelly: No, Judge. This is under the old order.

The Court: Is there a second offender—

Mr. Clayman: The second offender would be not less than five nor more than twenty years and a fine of twenty thousand dollars and a third and subsequent offender, not less than ten nor more than forty years and a twenty thousand dollar fine.

It is our information that Mr. Poblete is under the first, being a first offender.

The Court: I see. Mr. Poblete, how old are you?

The Defendant: Fifty-three years old.

The Court: How much education have you had?

The Defendant: Only to the third year of elementary school.

The Court: Where was that?

The Defendant: Chile.

The Court: Have you ever been treated for mental or emotional problems?

The Defendant: No.

Stenographer's Transcript

The Court: Do you take drugs?

The Defendant: No.

The Court: Are you under any medication?

The Defendant: No sir.

The Court: Is your mind clear now?

The Defendant: Yes.

The Court: Has anybody made any threats or promises to induce you to waive your rights and plead guilty?

The Defendant: No sir.

The Court: Are you doing this voluntarily?

The Defendant: Yes sir.

The Court: You know this is a very serious charge and you are entitled to be charged by the Grand Jury.

The Defendant: Yes sir.

The Court: That's a group of citizens who act to protect defendants against unjust charges.

However, you may waive that protection and if you wish, after the interpreter interprets the waiver form, you may sign it.

Interpreter Ras: He says "I don't want to have a Grand Jury."

The Court: Well, read the statement before he signs it.
(pause)

Interpreter Ras: All right, Judge.

The Court: All right. You may execute it. Each copy please.

(pause)

The Court: The defendant has executed the waiver of Grand Jury after having it interpreted.

Have you explained to your client the various rights that he gives up?

Mr. Kelly: I have.

The Court: You understand you are entitled to an immediate trial by jury with many legal protections.

The Government would have to prove you guilty beyond a reasonable doubt and you would be presumed to be innocent.

Stenographer's Transcript

The Government would pay for your counsel and any other experts and witnesses you would require.

If you plead guilty you may be sentenced to a minimum of two years and a maximum of ten years imprisonment with a twenty thousand dollar fine and if you should thereafter commit the same crime the sentence can be five to twenty years and thereafter if you commit it a third time, it is ten to forty years.

Would you translate, if you haven't already, the information.

(pause)

The Court: Tell me in your own words what your role was in these events.

The Defendant: I am guilty of what I did. I admit that I did something illegal.

The Court: **Tell me** some of the details.

The Defendant: That I came from Chile to bring this drug here in the United States to sell it.

The Court: How much did you have, in toto?

The Defendant: Five kilos.

The Court: Well, that confirms the information available to the Court from the trial of related defendants.

Mr. Kelly: Yes sir.

The Court: Are there any other questions I should ask at this time?

Mr. Kelly: No.

Mr. Clayman: No, your Honor.

The Court: Do you have any questions you want to ask me before I take your plea?

The Defendant: That I will thank you and I know you are going to be lenient with me.

I have my mother which is very old and doesn't know what is happening to me. She thinks I was transferred to a southern province of Chile.

The Court: You understand that I cannot promise you leniency at all. You must be aware that you may go to jail for up to ten years.

Stenographer's Transcript

The Defendant: My mother is very old, eighty-one years old. She is going to die. I know I did something wrong and I will be punished for it, but I hope you are lenient and I will never get involved with anything like that.

The Court: I will hear that after we have a probation report when I determine the sentence. I am not going to do that now.

The Defendant: Okay.

The Court: All I want to do now is decide whether I should accept your plea.

There will be an investigation, first by the probation department and they will submit a report. Then, the judges will discuss it and I will hear you and your attorney and then I will make up my mind.

How do you plead to the information, guilty or not guilty?

The Defendant: Guilty.

The Court: All right. I accept the plea.

It should not take very long to get a probation report. We have the facts already in the other probation reports and the rest of it you won't be able to confirm so you should be able to get him one quickly.

He is in jail. We should dispose of the case. You can do it on the information you can get from him.

I will put it down for two weeks.

Mr. Clayman: There's another matter with regard to this defendant and certain cooperation of this defendant where the sentence would not, even in his interest, be best to put on in two weeks.

The Court: When do you want to put it on for sentence?

Mr. Clayman: I would ask for a month, at least.

The Court: Then we will leave it without date and probation should proceed in the ordinary course.

* * * * *

**Exhibit Attached to Appellant's Motion to Dismiss
and Affidavit of July 5, 1974**

rec.

6/4/74

SERGIO NAPOLEON POBLETE MAYOZGA.

I was arrested in the city of Antofagasta on November 13th. 1973 by F.B.I. agents following a request made by the United States. I was brought to Santiago to the Investigation Headquarters where I was brutally beaten and given electric shocks on the genitals, the mouth and all over my body. They also broke my nose and my left cheekbone. I was so badly beaten and severely tortured that, as a result, I urinated blood for more than thirty days thereafter. During the thirty seven days that I was kept in that institution, I was beaten during fifteen consecutive days. Later on, on December 20, 1973 I was transferred to a concentration camp, the Chile Stadium. I was kept there until May 4th. 1974. On that day I was taken from the Stadium. I had no idea where was I being taken to. I thought that they would take me to the Chacabuco concentration camp in the Northern part of my country where prisoners are usually transferred to when there are too many persons at the Stadium. I never even imagined that I was being flown over here, to this country since at no moment was I ever brought before any judge or court of justice.

On Saturday, May 4th. 1974, I was called to the guard quarters in Chile Stadium. I thought that it was my family who had come to visit me but that was not the case. They handcuffed me and placed me on a police truck together with another five individuals who had also been handcuffed. They drove us to Pudahuel airport and there we were placed on board of a Braniff aircraft under the constant surveillance of american federal agents and chilean policemen. Upon our arrival at Lima airport policemen armed with

*Exhibit Attached to Appellant's Motion to Dismiss
and Affidavit of July 5, 1974*

machine guns led us to a room. I was so overwhelmed by feelings of incertitude and anxiety that I suffered a nervous breakdown. I have just recovered from it. Now, several days later, my family finally knows that I am arrested in New York.

During the time I was under arrest in the Chile Stadium, a commission headed by the former american ambassador in Chile, Mr. Duncan, came to visit us and I had the opportunity to talk with him about the beatings of which myself and all the other political prisoners held in that concentration camp had been victims of.

* * * * *



STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 26th day of February 19 75 he served ^{two copies} ~~a copy~~ of the within Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Roy L. Reardon, Esq.
One Battery Park Plaza
New York, N. Y. 10004

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ^{225 Cadman Plaza East} ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

26th day of February 19 75

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-6301966
Qualified in Kings County
Commission Expires March 30, 1975